RESOLUTION NO. 36-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE, AND ADMINISTER AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT, A DEVELOPER PARTICIPATION AGREEMENT ESTABLISHING CITY PARTICIPATION IN OFFSITE INFRASTRUCTURE IMPROVEMENTS, AND A WAIVER OF PARK LAND DEDICATION REQUIREMENTS, FOR SUCH PURPOSES WITH S16 TEXAS HOLD-EM MESQUITE, LLC, AN IDAHO LIMITED LIABILITY COMPANY, FOR THE CONSTRUCTION AND DEVELOPMENT OF A SELF-STORAGE FACILITY, AGE-RESTRICTED SINGLE-FAMILY RENTAL COMMUNITY, AND OFFSITE INFRASTRUCTURE IMPROVEMENTS LOCATED AT 435 CLAY MATHIS ROAD AND 2235 EAST GLEN BOULEVARD IN MESQUITE, TEXAS.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the **"City"**), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to S16 Texas Hold-em Mesquite, LLC (the **"Developer"**), for the construction and development of a self-storage facility, age-restricted single family rental community, and offsite infrastructure improvements, each in the City, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the **"Agreement"**); and

WHEREAS, the Agreement is a developer participation agreement establishing the City's participation in the cost of the offsite infrastructure improvements to be less than 30% as authorized by Subchapter C, Chapter 212, Texas Local Government Code; and

WHEREAS, the property is located on an approximately 14.753-acre tract of land in the Samuel Andrews Survey, Abstract No. 40, Dallas County, Texas, and being the 14.753 acre tract described in Instrument Number 201900350539, Official Public Records, Dallas County, Texas, as more particularly described and depicted in Exhibits A and B to the Agreement, and generally located at 435 Clay Mathis Road and 2235 East Glen Boulevard, City of Mesquite, Dallas County, Texas (the **"Property"**); and

WHEREAS, the City would like to encourage the development of the Property by granting certain economic development incentives to the Developer; and

WHEREAS, development of the Property will increase the taxable value of the Property thereby adding value to the City's tax rolls and increasing the ad valorem property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City; and

WHEREAS, pursuant to the Code of the City of Mesquite, Texas, Appendix B, Section 1, Article VI, the City Council further finds the private recreation facilities being built on the Property for the residents of Mesquite satisfy a portion of the park land dedication requirement for the Property and further find it is in the best interest of the City to waive the remaining portion of the park land dedication requirement up to an amount not to exceed three hundred twenty-six thousand and 00/100 dollars ($326,000), if the Developer enters into and satisfies the terms and conditions of this Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Developer, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, will benefit the City, and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council finds the private recreation facilities being built on the Property for the residents of Mesquite satisfy a portion of the park land dedication requirement for the Property and it is in the best interest of the City to waive the remaining portion of the park land dedication requirement up to an amount not to exceed three hundred twenty-six thousand and 00/100 dollars ($326,000), if the Developer enters into and satisfies the terms and conditions of the proposed Agreement.

SECTION 3. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 4. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 5. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

SECTION 6. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments

approved by the City Manager, do not increase City expenditures under the Agreement in excess of $50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 6 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 6 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 7. That the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph or section of this Resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of August 2023.

DocuSigned by:
Daniel Aleman Jr.
D999585317D142B...

Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:
Sonja Land
C2518095973F46A...

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:
David Paschall
666E18891208434...

David L. Paschall
City Attorney

EXHIBIT 1

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

Between the City of Mesquite and
S16 Texas Hold-Em Mesquite, LLC

CITY OF MESQUITE, TEXAS
AND
S16 TEXAS HOLD-EM MESQUITE, LLC
CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF MESQUITE, TEXAS**, a Texas home-rule municipality ("**City**"), and **S16 TEXAS HOLD-EM MESQUITE, LLC,** an Idaho limited liability company ("**Developer**"), for the purposes and considerations stated below:

WHEREAS, the Developer intends to construct or cause to be constructed (1) commercial self-storage building having a cumulative minimum of approximately 112,850 gross square feet located at 435 Clay Mathis Rd. Mesquite, TX 75181 ("**Storage Facility**") and an age restricted single family rental community with a minimum of approximately 168 units ("**Rental Community**") located on property at 2235 East Glen Blvd., Mesquite, TX 75181, as more particularly described and depicted in ***Exhibits A*** and ***B*** of this Agreement both incorporated herein by reference (such property hereinafter referred to as the "**Property**"; and the Storage Facility and Rental Community, hereinafter may be individually referred to as "**Building**" or collectively referred to as the "**Buildings**"); and

WHEREAS, the Developer covenants and agrees to construct offsite infrastructure improvements including a water line, storm sewers and sanitary sewer line to the standards identified in the Mesquite Engineering Design Manual as amended, and connecting in at existing City infrastructure, as depicted in ***Exhibit B*** of this Agreement ("**Offsite Infrastructure Improvements**"), and this Agreement is a developer participation agreement establishing the City's participation in the cost of the Offsite Infrastructure Improvements to be less than 30% as authorized by Subchapter C, Chapter 212, Texas Local Government Code; and

WHEREAS, the Developer covenants and agrees to construct the Recreation Facilities on the Property as depicted in **Exhibit C** of this Agreement incorporated herein by reference concurrently with the construction of the Rental Community; and

WHEREAS, the City created the Alcott Logistics Station Tax Increment Reinvestment Zone, City of Mesquite, Texas (the "**Zone**") by Ordinance No. 4853 approved by the City Council of the City of Mesquite, Texas ("**City Council**") on April 5, 2021, to promote development or redevelopment in the Zone, in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311 and the Property is in the Zone; and

WHEREAS, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code, an incentive to Developer to develop the Property and Buildings as defined below; and

WHEREAS, the City represents that it possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

WHEREAS, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development in the Zone, with the development and diversification of the economy of the State and City, will aid in eliminating unemployment and underemployment in the State and City, will enhance business and commercial activity within the City and Zone, and will increase the taxable value of the Property by adding improvements to the land, thereby increasing property taxes to be collected by the City; and

WHEREAS, pursuant to the Code of the City of Mesquite, Texas, Appendix B, Section 1, Article VI, the City Council finds the private recreation facilities being built on the Property for the residents of Mesquite satisfy a portion of the park land dedication requirement for the Property and further find it is in the best interest of the City to waive the remaining portion of the park land dedication requirement up to an amount not to exceed three hundred twenty-six thousand and 00/100 dollars ($326,000), if the Developer enters into and satisfies the terms and conditions of the Agreement; and

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City, and as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **August 28, 2029**, unless terminated sooner under the provisions hereof or extended due to Force Majeure. In the event this Agreement is not fully executed within sixty (60) days after approval by the City Council of the City of Mesquite, Texas, then this Agreement shall be null and void, and shall have no effect on either party. This Agreement may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

(a) **Affiliate.** The words "Affiliate" or "Affiliates" means any person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term "control" "controlling" or "controlled by" shall mean the possession, directly, of the power to direct or cause the direction of management or policies of the Developer, whether through ownership of voting securities, interests, by contract or otherwise, and which may be subject to "major decisions" approval or veto rights customarily provided to limited partners or non-managing members, excluding in each case, any lender of the Developer or any affiliate of such Developer.

(b) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.

(c) **Buildings**. The term "Building" or "Buildings" means the buildings to be constructed on the Property and described and depicted further in ***Exhibit C***, which is incorporated herein by reference.

(d) **Building Official**. The words "Building Official" means the Building Official of the City as defined in Section 202, "Definitions," of Chapter 2, "Definitions," of the IBC.

(e) **Building Permit**. The words "Building Permit" shall mean a written permit or authorization issued by the City, after review and verification of code compliance, by the Building Official, or the Building Official's designee, to the Developer allowing the Developer to proceed with construction of one or more Buildings, and includes but is not limited to any construction related permit required under Section 105, "Permits," of Part 2, "Administration and Enforcement," of Chapter 1, "Scope and Application," of the IBC.

(f) **Capital Investment Certificate.** The words "Capital Investment Certificate" means a certificate in such form as is reasonably acceptable to the City executed by the Developer

certifying the amount of expenditures made by the Developer in connection with the construction of the Qualified Expenditures as of the date of such certificate (each a "**Capital Investment Certificate**") provided, however, the Parties agree that only Qualified Expenditures shall be included in the expenditures reported in each Capital Investment Certificate.

(g) **Cash Grant Incentive.** The words "Cash Grant Incentive" shall have the meaning described in Section 7 of this Agreement.

(h) **Cash Grant Conditions Precedent**. The words "Cash Grant Conditions Precedent" shall have the meaning described in Section 4 of this Agreement.

(i) **Certificate of Compliance**. The words "Certificate of Compliance" mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Developer by a duly authorized representative certifying to the City: (i) that all applicable Conditions Precedent have been satisfied and are then continuing; and (ii) that no Event of Default (as hereinafter defined) then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute an Event of Default under the terms of this Agreement.

(j) **Certificate of Occupancy.** The words "Certificate of Occupancy" mean a final Certificate of Occupancy for the applicable Building(s)issued by the City to the Developer after the construction of the Qualified Expenditures located on the Property as required by this Agreement.

(k) **City.** The word "City" means the City of Mesquite, Texas, a Texas home-rule municipality and a party to this Agreement. For the purposes of this Agreement, City's physical address is 1515 N. Galloway, Mesquite, Texas 75149.

(l) **City Regulation(s).** The words "City Regulations" shall mean any ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, as amended and adopted by the City and as are applicable to the Property and/or Buildings, including but not limited to the Mesquite City Code of Ordinances and the City of Mesquite's Engineering Design Manual.

(m) **Commence Construction.** The words "Commence Construction" or "Commencement of Construction" shall mean with respect to the Buildings: (i) all building plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to begin construction of the Buildings and improvements, (ii) all necessary Building Permits and other permits to begin construction of the Buildings and improvements have been issued by the applicable governmental authorities; and (iii) actual vertical construction of the Buildings and improvements has commenced. The words "Commence Construction" or "Commencement of Construction" shall mean with respect to the Offsite Infrastructure Improvements that: (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to

begin construction of the Offsite Infrastructure Improvements; (ii) necessary permits to begin construction of the Offsite Infrastructure Improvements have been issued by the applicable governmental authorities; and (iii) actual horizontal construction of the Offsite Infrastructure Improvements has commenced.

(n) **Completion of Construction**. The words "Completion of Construction" or "Complete Construction" with respect to the Buildings means the Developer must obtain from the City a Certificate of Occupancy for each of the Buildings which shall be constructed as provided herein. The words "Completion of Construction" or "Complete Construction" with respect to the Offsite Infrastructure Improvements shall mean (i) actual construction of the Offsite Infrastructure Improvements is substantially complete and (ii) the City and other applicable government agencies have inspected, approved, and accepted all of the Offsite Infrastructure Improvements.

(o) **Developer**. The word "Developer" means S16 Texas Hold-Em Mesquite, LLC, an Idaho limited liability company and a party to this Agreement. For the purposes of this Agreement, the Developer's physical address is 901 W. Wall St, Suite 106, Grapevine, TX 76051.

(p) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the City and Developer.

(q) **Event of Bankruptcy or Insolvency.** The words "Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of a receiver for any part of such party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any party, or the involuntary commencement of any proceeding against any party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

(r) **Event of Default**. The words "Event of Default" mean and include any of the Events of Default set forth in the section entitled "Events of Default" in this Agreement.

(s) **Exterior Finish Board.** The words "Exterior Finish Board" mean the exterior finish board for any Building, attached hereto as ***Exhibit E*** of this Agreement and incorporated herein by reference.

(t) **Façade/Elevation Plan.** The words "Façade/Elevation Plan" mean the building façade/elevation plan for the contemplated Buildings, attached hereto as ***Exhibit F*** of this Agreement and incorporated herein for all purposes.

(u) **Force Majeure**. The words "Force Majeure" as used in this Agreement shall mean a major unforeseeable act or event that: (i) prevents a party from performing its obligations

under this Agreement; (ii) is beyond the reasonable control of the party; (iii) is not caused by any act or omission on the part of the party; and (iv) could not have been prevented or avoided by the exercise by the party of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An event of Force Majeure must satisfy each of the above requirements and includes but is not limited to: (a) natural phenomena and acts of God such as lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters; (b) explosions; (c) fires; (d) wars, acts of terrorism, and civil disturbances; (e) strikes, labor shortages, or shortage of materials or equipment, that delay construction for a minimum of thirty (30) consecutive days; (f) abnormal weather based on the 5-year NOAA climatic average weather days for North Texas; (g) delays in the issuance of Building Permits except for delays caused in whole or in part by any act or omission of the Developer, their consultants, contractors, or subcontractors; (h) unreasonable delays in City review of plans; (i) changes in applicable law that materially impact the design or construction of the project; (j) delays caused by litigation or negotiations necessary to obtain easements and/or fee title property in order to complete the work described herein; and (k) pandemics, epidemics, or public health crisis declared by the United States Center for Disease Control and Prevention on or after the Effective Date of this Agreement. Notwithstanding the foregoing, a Force Majeure event does not include: (1) any financial or economic hardship; (2) changes in market or economic conditions; (3) any default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the affected party; (4) insufficiency of funds; (5) any delay of the general contractor or any subcontractor, vendor or supplier, except for delay(s) as a result of an act or event defined herein as Force Majeure; or (6) a governmental order that prevents Developer or their contractors or subcontractors, from proceeding with the construction of any portion of the project, as a result of the Developer's, or their contractors' or subcontractors, failure to comply with Applicable Law.

(v) **General Conditions Precedent**. The words "General Conditions Precedent" shall have the meaning described in Section 4 of this Agreement.

(w) **IBC or International Building Code** means the International Building Code, 2018 Edition, a publication of the International Code Council, adopted by the City with local amendments and designated as the official building code of the City, as such definition may hereafter be amended by the adoption of a later edition of the IBC as the official building code of the City.

(x) **Incentive Grants**. The words "Incentive Grants" shall mean the Park Land Dedication Incentive, the Storage Facility Incentive, the Rental Community Group 1 Incentive, the Rental Community Group 2 Incentive, the Rental Community Group 3 Incentive, and the Rental Community Group 4 Incentive.

(y) **Incentive Grant Maximum**. The words "Incentive Grant Maximum" shall have the meaning described in Section 7 of this Agreement.

(z) **Incentive Grant Payment**. The words "Incentive Grant Payment" shall mean each

payment of an Incentive Grant to be made under this Agreement, including but not limited to waivers of any amounts normally due to or collected by the City, as further described by Sections 4 and 7 of this Agreement.

(aa) **Maximum Lawful Rate.** The words "Maximum Lawful Rate" shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

(bb) **Offsite Infrastructure Improvements**. The words "Offsite Infrastructure Improvements" shall mean those water, sewer and drainage projects, including but not limited to the "Offsite Infrastructure Improvements", to be constructed offsite of the Property for the benefit of the Storage Facility and Rental Community as depicted in ***Exhibit B*** hereto and as more particularly depicted and described in the engineering drawings on file with the City under Permit Number EN0522-0612.

(cc) **Park Land Dedication.** The words "Park Land Dedication" with respect to the Incentive Grant mean any dedication or fee in lieu of dedication the Developer should pay the City in accordance with City Regulations, specifically the Code of the City of Mesquite, Texas, Appendix B, Section 1, Article VI.

(dd) **Park Land Dedication Incentive**. The words "Park Land Dedication Incentive" shall have the meaning described in Section 7 of this Agreement.

(ee) **Payment Request.** The words "Payment Request" with respect to an Incentive Grant mean a complete written request from the Developer to the City, accompanied by copies of the Building Permit(s), Certificate of Occupancy, contract(s) for construction of such Buildings and improvements, and copies of invoices, bills, and receipts in order to demonstrate a cost incurred by Developer with respect to such Buildings, exclusive of the (i) land value, (ii) land acquisition costs, (iii) the Offsite Infrastructure Improvements, and including such other information as may reasonably be requested by the City for verification.

(ff) **Property.** The word "Property" means the approximately 14.75 acres of land in the Samuel Andrews Survey Abstract No. 40, City of Mesquite, Dallas County, Texas, as more particularly described in ***Exhibit A*** of this Agreement, and having street addresses of 2210 East Scyene Road, Mesquite, Texas 75181.

(gg) **Qualified Expenditures.** The words "Qualified Expenditures" for a particular Building mean those expenditures relating to such Building consisting of costs capitalized as capital assets on the books of the Developer in accordance with generally accepted accounting principles. The Qualified Expenditures shall comply with all City, county, state and federal development standards, architectural standards, and applicable law and regulations, including the City's zoning ordinance and landscape plan requirements. The term

"Qualified Expenditures" does not include land acquisition costs or costs associated with the Offsite Infrastructure Improvements.

(hh) **Recreation Facilities.** The words "Recreation Facilities" shall have the meaning described in the recitals of this Agreement.

(ii) **Rental Community.** The words "Rental Community" shall have the meaning described in the recitals of this Agreement.

(jj) **Rental Community Group 1 Conditions Precedent.** The words "Rental Community Group 1 Conditions Precedent" shall have the meaning described in Section 4 of this Agreement.

(kk) **Rental Community Group 2 Condition Precedent.** The words "Rental Community Group 2 Condition Precedent" shall have the meaning described in Section 4 of this Agreement.

(ll) **Rental Community Group 3 Condition Precedent.** The words "Rental Community Group 3 Condition Precedent" shall have the meaning described in Section 4 of this Agreement.

(mm) **Rental Community Group 4 Condition Precedent.** The words "Rental Community Group 4 Condition Precedent" shall have the meaning described in Section 4 of this Agreement.

(nn) **Rental Community Group 1 Incentive**. The words "Rental Community Group 1 Incentive" shall have the meaning described in Section 7 of this Agreement.

(oo) **Rental Community Group 2 Incentive**. The words "Rental Community Group 2 Incentive" shall have the meaning described in Section 7 of this Agreement.

(pp) **Rental Community Group 3 Incentive**. The words "Rental Community Group 3 Incentive" shall have the meaning described in Section 7 of this Agreement.

(qq) **Rental Community Group 4 Incentive**. The words "Rental Community Group 4 Incentive" shall have the meaning described in Section 7 of this Agreement.

(rr) **Rental Community Incentive.** The words "Rental Community Incentive" shall have the meaning described in Section 7 of this Agreement.

(ss) **Specific Conditions Precedent**. The words "Specific Conditions Precedent" shall mean collectively, the Storage Facility Conditions Precedent, Cash Grant Conditions Precedent the Rental Community Group 1 Conditions Precedent, Rental Community Group 2 Conditions Precedent, Rental Community Group 3 Conditions Precedent, and Rental Community Group 4 Conditions Precedent.

(tt) **Storage Facility.** The words "Storage Facility" shall have the meaning described in the recitals of this Agreement.

(uu) **Storage Facility Conditions Precedent.** The words "Storage Facility Conditions Precedent" shall have the meaning described in Section 4 of this Agreement.

(vv) **Storage Facility Incentive.** The words "Storage Facility Incentive" shall have the meaning described in Section 7 of this Agreement.

(ww) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

(xx) **Water, Wastewater, and Roadway Impact Fees**. The words "Water, Wastewater, and Roadway Impact Fees" mean water, wastewater and roadway impact fees imposed by the City pursuant to Texas Local Government Code Chapter 395 and the City Regulations, both as may be hereafter amended or replaced, to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansion necessitated by and attributable to the Improvements provided, however, in no event shall Water, Wastewater and Roadway Impact Fees include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements imposed pursuant to the City Regulations.

SECTION 4. CONDITIONS TO INCENTIVE GRANT PAYMENT

Developer (1) agrees to each of the following, and (2) agrees that the obligation of the City to pay each Incentive Grant Payment hereunder shall be conditioned upon the compliance and satisfaction of each of the terms and conditions of this Agreement by the Developer, in addition to each of the terms and conditions as set forth below:

(a) **General Conditions Precedent.** Each Incentive Grant Payment is conditioned upon the compliance and satisfaction of the following (the "General Conditions Precedent"):

i. Developer Commences Construction of the Offsite Infrastructure Improvements by **January 1, 2024**;

ii. There is Completion of Construction of the Offsite Infrastructure Improvements by **June 1, 2024**;

iii. The Buildings are constructed in accordance with the City's Zoning Ordinance, including but not limited to Ordinance No. 4919 approved by the City Council on December 6, 2021;

iv. The Developer timely pays to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Water, Wastewater, and Roadway Impact Fees assessed in connection with the projects;

v. Developer must be in full compliance with this Agreement, City Regulations, and must be current on the payment of all taxes owed on any property owned in whole or in part by Developer in the City including, but not limited to, the Property;

vi. Developer shall have timely paid all ad valorem taxes assessed against the Property and Buildings and business personal property located at the Property as of the date of any Payment Request;

vii. Developer shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by Developer with the Developer's obligations in this Agreement;

viii. Developer shall submit a Payment Request for each Incentive Grant to the City accompanied by any required documentation, and as of the date of such Payment Request, all terms of this Agreement, including applicable conditions precedent set forth herein, shall have been satisfied and are then continuing. A Payment Request shall be submitted to the City's Finance Director at 757 N. Galloway, Mesquite, Texas 75149 within thirty (30) days of Developer's entitlement to an Incentive Grant earned herein; and

ix. In addition to any other requirements in this Agreement, each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request. Additionally, Developer shall submit in support of its Payment Request any information reasonably requested by the City to verify compliance of Developer with this Agreement.

(b) **Rental Community Group 1 Conditions Precedent.** The Rental Community Group 1 Incentive payment is conditioned upon the compliance and satisfaction of the following ("**Rental Community Group 1 Conditions Precedent"),** in addition to the General Conditions Precedent stated above:

i. Developer Commences Construction of the Rental Community by **January 1, 2024**; and
ii. There is Completion of Construction of a minimum of 40 units by **October 1, 2024**.

(c) **Rental Community Group 2 Condition Precedent.** The Rental Community Group 2 Incentive payment is conditioned upon the Completion of Construction of a cumulative minimum of 80 units by **April 1, 2025** ("**Rental Community Group 2 Condition Precedent**"), in addition to the General Conditions Precedent stated above.

(d) **Rental Community Group 3 Condition Precedent.** The Rental Community Group 3 Incentive payment is conditioned upon the Completion of Construction of a cumulative minimum of 120 units by **October 1, 2025** ("**Rental Community Group 3 Condition Precedent**"), in addition to the General Conditions Precedent stated above.

(e) **Rental Community Group 4 Condition Precedent.** The Rental Community Group 4 Incentive payment is conditioned upon the Completion of Construction of a cumulative minimum of 168 units by **April 1, 2026** ("**Rental Community Group 4 Condition Precedent**"), in addition to the General Conditions Precedent stated above.

(f) **Storage Facility Conditions Precedent.** The Storage Facility Incentive payment is conditioned upon the compliance and satisfaction of the following ("**Storage Facility Conditions Precedent**"), in addition to the General Conditions Precedent stated above:

i. Developer Commences Construction of the Storage Facility by **January 1, 2024**;
ii. There is Completion of Construction of the Storage Facility by **April 1, 2025**; and
iii. The minimum aggregate gross square footage of the Storage Facility shall equal 112,850 or more.

(g) **Cash Grant Conditions Precedent.** The Cash Grant Incentive payment is conditioned upon the compliance and satisfaction with the requirements of Section 5 of this Agreement ("**Cash Grant Conditions Precedent**"), in addition to the General Conditions Precedent stated above.

SECTION 5. CONSTRUCTION OF THE OFFSITE INFRASTRUCTURE IMPROVEMENTS

In connection with construction of the Offsite Infrastructure Improvements, the Developer agrees to the following:

(a) The Parties agree that construction of the Offsite Infrastructure Improvements , was not a condition of approval of the Buildings but is (as is described above) only a condition precedent to the payment of the Incentive Grant pursuant to this Agreement and accordingly V.T.C.A., Local Government Code §§ 212.904 and 395.023 do not apply provided, however, in the event a court of competent jurisdiction determines that § 212.904 and/or § 395.023 apply, the Parties agree that payment by the City to the Developer of the Incentive Grant shall satisfy all requirements under §§ 212.904 and 395.023.

(b) The Developer shall ensure Offsite Infrastructure Improvements (i) comply in all respects with the Closeout and Acceptance Requirements set forth in ***Exhibit G*** attached hereto and incorporated herein by reference (the "**Closeout and Acceptance Requirements**"); (ii) comply in all respects with the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as ***Exhibit H*** and incorporated herein by reference (the

"**Record Drawings and Plat Requirements**"); and (iii) pay in full all contractors, subcontractors, suppliers, laborers and materialmen for all labor and materials in connection with the construction of the Offsite Infrastructure Improvements.

(c) Prior to Commencement of Construction of any Offsite Infrastructure Improvements, the Developer shall make, or cause to be made, application for any necessary permits and approvals required by the City and any other applicable governmental authorities to be issued for the construction of the improvements and shall obligate each general contractor, architect, and consultants performing work in connection with such improvements to obtain all applicable permits, licenses or approvals as required by City Regulations. Developer shall require or cause the design, inspection, and supervision of the construction of the improvements to be undertaken with respect to the Offsite Infrastructure Improvements to be in accordance with all City Regulations.

(d) Prior to Commencement of Construction of the Offsite Infrastructure Improvements, the Developer shall cause the contractors and subcontractors performing work in connection with the construction of such improvements to purchase and maintain payment, performance and two-year maintenance bonds (the "**Bonds**") in the penal sum of 100% of the amount set forth in each construction contract for the improvements. The Bonds shall be written on forms approved for use by the City and satisfactory to the City Attorney. Any surety through which a bond is written shall be a surety duly authorized to conduct an insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, provided that the City Attorney has the right to reject any surety regardless of such surety's authorization to do business in Texas. Should it appear to the City that, at any time during the existence of this Agreement, the surety on the Bonds has become insolvent, bankrupt, or otherwise financially unable to perform its obligations under the Bonds, the City may demand that Developer furnish additional or substitute surety through an approved surety satisfactory to the City Attorney; the act of the City with reference to demanding additional or substitute surety shall never be construed to relieve the original surety of its obligations under the Bonds. The Bonds issued with respect to the construction of the improvements shall be delivered to the City prior to the commencement of construction of the improvements.

(e) Developer shall design and construct or cause the design and construction of the Offsite Infrastructure Improvements, together with and including the acquisition, at its sole cost, of any and all easements or fee simple title to land necessary to provide for and accommodate the improvements that are not to be constructed on land owned by the City. To the extent Developer is required to acquire easements and/or fee title to property to complete the Offsite Infrastructure Improvements, and the owners of such property are unwilling to provide such on a commercially reasonable basis, as determined by Developer and City, the City will assist with the acquisition of such easement and/or fee title rights through its power of eminent domain, to the extent allowed by applicable law and subject to approval by the Mesquite City Council. In the event the City uses eminent domain on behalf of the Developer, the Developer shall reimburse the City for all costs associated with the exercise of such, including but not limited to costs of acquisition, court costs and fees, and attorney's fees.

(f) Developer shall comply, or shall use commercially reasonable efforts to cause its contractors to comply, with applicable state and federal laws and City Regulations regarding the design and construction of the Offsite Infrastructure Improvements. Because this Agreement is a developer participation agreement under Subchapter C, Chapter 212, Texas Local Government Code, Developer is not required to comply with public bidding laws for the bidding and construction of the Offsite Infrastructure Improvements.

(g) The following requirements apply to construction contracts for the Offsite Infrastructure Improvements:

i. Plans and specifications shall comply with all City regulations and applicable laws. Such plans and specifications shall be subject to the review and approval of the City prior to the issuance of any permits; and

ii. Each construction contract shall provide that the contractor is an independent contractor, independent of and not the agent of the City, and that the contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and

iii. Each construction contract shall provide that the contractor shall indemnify the City and City related parties for any costs or liabilities thereunder and for the negligent acts or omissions of the contractor and the contractor's agents; and

iv. Each construction contract shall provide that all contractors, architects, engineers, consultants and suppliers will look solely to Developer, not to the City, for payment of all costs and claims associated with construction of the Offsite Infrastructure Improvements.

(h) Developer shall ensure at all times during construction that access and use of Scyene Road, Clay Mathis Road, and East Glen Boulevard are maintained for the public and emergency responders and that such access complies with all City Regulations and applicable state and federal laws and regulations.

(i) Upon Completion of Construction of the Offsite Infrastructure Improvements, Developer shall provide the City with a final cost summary of the improvements project costs incurred and paid in connection with the construction of the improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by "all bills paid" affidavits or lien waivers executed by Developer and/or its contractors with regard to the improvements.

(j) Developer shall provide the City with reasonable advance notice of any regularly-scheduled construction meetings regarding the improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the Offsite Infrastructure Improvements, and shall provide the City with copies of any construction schedules as are discussed and reviewed at any such regularly-scheduled construction meeting.

(k) Unless otherwise approved in writing by the City, all improvements for the Offsite Infrastructure Improvements shall be constructed and dedicated to the City in accordance

with City Regulations. Developer agrees the improvements shall not have a lien or cloud on title upon their dedication and acceptance by the City.

(l) With respect to the Offsite Infrastructure Improvements, to the extent fee title is owned by Developer, Developer shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with City Regulations, the rights-of-way and easements necessary for the construction, operation, and maintenance of the road, water, drainage and sewer improvements constructed by Developer at the Completion of Construction of such improvements and upon acceptance by the City. To the extent fee title is owned by the City or any other third party, Developer will reasonably cooperate in causing the foregoing to occur.

(m) It is understood and agreed by and among the Parties that Developer is acting independently in the design, construction and development of the Offsite Infrastructure Improvements and the City assumes no responsibility or liability to any third parties or Developer in connection with Developer's obligations hereunder.

SECTION 6. INSURANCE AND INDEMNIFICATION

(a) **Insurance.** With no intent to limit any contractor's liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the contractor(s) constructing the Offsite Infrastructure Improvements, the types of coverage and amounts of insurance set forth in ***Exhibit D*** attached hereto and incorporated herein by reference. Such insurance shall contain such terms and provisions as set forth on ***Exhibit D*** and shall be in full force and effect at all times during construction of the Offsite Infrastructure Improvements.

(b) **Waiver of Subrogation.** The worker's compensation, employers' liability and general liability insurance required pursuant to this Agreement with respect to the Offsite Infrastructure Improvements shall provide for waivers of all rights of subrogation against the City as more fully set forth in ***Exhibit D***

(c) **Additional Insured.** As more fully set forth in ***Exhibit D,*** the general liability and auto liability insurance coverage required pursuant to this Agreement with respect to the Offsite Infrastructure Improvements shall include and name the City as an additional insured.

(d) **Written Notice of Cancellation.** Each policy required by this Agreement with respect to the Offsite Infrastructure Improvements, except worker's compensation and professional liability, shall be endorsed to provide the City sixty (60) days' written notice prior to any cancellation, termination or material change of coverage.

(e) **Policies, Endorsements and Certificates of Insurance.** The Developer shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the Commencement of Construction of the Offsite Infrastructure Improvements and within ten (10) days before expiration of coverage, the Developer shall cause each contractor to

deliver renewal policies or certificates of insurance evidencing renewal and payment of the renewal premium. In addition, the Developer shall cause each contractor to provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies) within ten (10) business days after written request by the City.

(f) **Carriers.** All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement with respect to the Offsite Infrastructure Improvements shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the State of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A-" or "VII" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Developer's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

(g) **INDEMNIFICATION. THE DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS AND EMPLOYEES, INSURERS AND RISK POOLS (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES AND COSTS INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND LITIGATION EXPENSES, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM ANY ACT OR OMISSION ON THE PART OF THE DEVELOPER AND ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS AND ITS CONTRACTORS' AND SUBCONTRACTORS' OFFICERS, AGENTS AND EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION OF THE OFFSITE INFRASTRUCTURE IMPROVEMENTS (EXCEPT WHEN SUCH LIABILITY, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES, OR COSTS ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE). NOTHING CONTAINED IN THIS SECTION 6(G) SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE, DEVELOPER SHALL BE REQUIRED, ON NOTICE FROM INDEMNITEE, TO DEFEND SUCH ACTION OR PROCEEDING AT DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO INDEMNITEE. THE PROVISIONS OF THIS SECTION**

6(G) ARE NOT TO BE STRICTLY CONSTRUED, ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY THIRD PARTY. IF ANY PART OF THIS INDEMNITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THE REMAINING PORTION OF THIS INDEMNITY SHALL CONTINUE IN FULL FORCE AND EFFECT. THE PROVISIONS OF THIS SECTION 6(G) SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

SECTION 7. INCENTIVE GRANT

(a) **Storage Facility Incentive**. The City hereby approves, subject to satisfaction of the General Conditions Precedent and Storage Facility Conditions Precedent and the covenants and limitations set forth in this Agreement, including Section 7(h) below, an economic development grant to the Developer in an amount equal to the total amount of Water, Wastewater, and Roadway Impact Fees imposed by the City and paid by the Developer pursuant to City policy and Chapter 395 of the Texas Local Government Code, as amended, as to the Storage Facility (the "**Storage Facility Incentive**"). This Incentive Grant shall be paid by City to Developer upon satisfaction of all applicable conditions precedent and within forty-five (45) calendar days of Developer submitting to City a Payment Request in compliance with this Section. The Storage Facility Incentive Grant is not payable from the actual Water, Wastewater and Roadway Impact Fees paid by the Developer to the City and shall rather be paid from the City's general revenues.

(b) **Rental Community Group 1 Incentive**. The City hereby approves, subject to satisfaction of the General Conditions Precedent and Rental Community Group 1 Conditions Precedent and the covenants and limitations set forth in this Agreement, including Section 7(h) below, an economic development grant to the Developer in an amount equal to the total amount of Water, Wastewater, and Roadway Impact Fees imposed by the City and paid by the Developer pursuant to City policy and Chapter 395 of the Texas Local Government Code, as amended, as to the first 40 units of the Rental Community (the "**Rental Community Group 1 Incentive**"). This Incentive Grant shall be paid by City to Developer upon satisfaction of all applicable conditions precedent and within forty-five (45) calendar days of Developer submitting to City a Payment Request in compliance with this Section. The Rental Community Group 1 Incentive is not payable from the actual Water, Wastewater and Roadway Impact Fees paid by the Developer to the City and shall rather be paid from the City's general revenues.

(c) **Rental Community Group 2 Incentive**. The City hereby approves, subject to satisfaction of the General Conditions Precedent and Rental Community Group 2 Condition Precedent and the covenants and limitations set forth in this Agreement, including Section 7(h) below, an economic development grant to the Developer in an amount equal to the total amount of Water, Wastewater, and Roadway Impact Fees imposed by the City and paid by the Developer pursuant to City policy and Chapter 395 of the Texas Local Government Code,

as amended, as to units 41 through 80 of the Rental Community (the "**Rental Community Group 2 Incentive**"). This Incentive Grant shall be paid by City to Developer upon satisfaction of all applicable conditions precedent and within forty-five calendar (45) days of Developer submitting to City a Payment Request in compliance with this Section. The Rental Community Group 2 Incentive is not payable from the actual Water, Wastewater and Roadway Impact Fees paid by the Developer to the City and shall rather be paid from the City's general revenues.

(d) **Rental Community Group 3 Incentive**. The City hereby approves, subject to satisfaction of the General Conditions Precedent and Rental Community Group 3 Condition Precedent and the covenants and limitations set forth in this Agreement, including Section 7(h) below, an economic development grant to the Developer in an amount equal to the total amount of Water, Wastewater, and Roadway Impact Fees imposed by the City and paid by the Developer pursuant to City policy and Chapter 395 of the Texas Local Government Code, as amended, as to units 81 through 120 of the Rental Community (the "**Rental Community Group 3 Incentive**"). This Incentive Grant shall be paid by City to Developer upon satisfaction of all applicable conditions precedent and within forty-five (45) calendar days of Developer submitting to City a Payment Request in compliance with this Section. The Rental Community Group 3 Incentive is not payable from the actual Water, Wastewater and Roadway Impact Fees paid by the Developer to the City and shall rather be paid from the City's general revenues.

(e) **Rental Community Group 4 Incentive**. The City hereby approves, subject to satisfaction of the General Conditions Precedent and Rental Community Group 4 Condition Precedent and the covenants and limitations set forth in this Agreement, including Section 7(h) below, an economic development grant to the Developer in an amount equal to the total amount of Water, Wastewater, and Roadway Impact Fees imposed by the City and paid by the Developer pursuant to City policy and Chapter 395 of the Texas Local Government Code, as amended, as to units 120 through 168 of the Rental Community (the "**Rental Community Group 4 Incentive**"). This Incentive Grant shall be paid by City to Developer upon satisfaction of all applicable conditions precedent and within forty-five (45) calendar days of Developer submitting to City a Payment Request in compliance with this Section. The Rental Community Group 4 Incentive is not payable from the actual Water, Wastewater and Roadway Impact Fees paid by the Developer to the City and shall rather be paid from the City's general revenues.

(f) **Park Land Dedication Incentive**. The City hereby approves, subject to satisfaction of the covenants and limitations set forth in this Agreement, including Section 7(h) below and this subparagraph, to grant Developer a credit for a portion of the Park Land Dedication requirement for the Property for the Recreation Facilities in the form of a waiver of the remaining of the Park Land Dedication requirement up to a total amount not to exceed three hundred twenty-six thousand and 00/100 dollars ($326,000) (the "**Park Land Dedication Incentive**"). This Incentive Grant shall be in the form of a waiver at the time the Park Land Dedication would normally be due to the City. To the extent any waiver of the Park Land Dedication Incentive, when combined with any other Incentive Grants

already paid, exceeds the Incentive Grant Maximum of this Agreement, then the Developer agrees to pay the City said excess within thirty (30) calendar days of the City sending Developer written notice of the excess amount. For example, if at the time the Park Land Dedication requirement is due to the City and it is calculated to be the sum of $350,000, and the Developer has earned and received Incentive Grants in the total sum of $1,700,000, the total Park Land Dedication Incentive provided to the Developer by way of waiver would be the sum of $289,223.00, which when combined with the Incentive Grants already paid will equal the Incentive Grant Maximum of $1,989,223. In such event, the Developer will owe and would pay the City the remaining balance of the Park Land Dedication requirement in the sum of $60,777.00 ($350,000 - $289,000.00. Furthermore, the City may exercise any right of offset provided in this Agreement, including but not limited to Section 12(s), or by applicable law. This Section 7(f) shall expressly survive the expiration or termination of this Agreement.

(g) **Cash Grant Incentive**. The City hereby approves, subject to satisfaction of the General Conditions Precedent, Cash Grant Conditions Precedent, and the covenants and limitations set forth in this Agreement, including Section 7(h) an economic development cash grant to the Developer in the amount of ONE MILLION ONE HUNDRED THOUSAND AND 00/100 DOLLARS ($1,100,000.00) for the economic development provided in this Agreement (the "**Cash Grant Incentive**"). This Incentive Grant shall be paid by City to Developer upon satisfaction of all applicable conditions precedent and within forty-five (45) calendar days of Developer submitting to City a Payment Request in compliance with this Section. The Cash Grant is not payable from the actual Water, Wastewater and Roadway Impact Fees paid by the Developer to the City and shall rather be paid from the City's general revenues.

(h) **Incentive Grant Maximum.** The cumulative value of economic development Incentive Grants granted to Developer under this Agreement, including but not limited to the the Park Land Dedication Incentive, shall not exceed the maximum amount of (1) ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND TWO HUNDRED TWENTY-THREE AND 00/100 DOLLARS ($1,989,223.00) **("Incentive Grant Maximum").**

(i) **Payment of Incentive Grants**. The Incentive Grants payable by the City to the Developer as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City, but is payable only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. Payment of each Incentive Grant is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the payment is to be paid.

SECTION 8. CESSATION OF PAYMENT.

The City shall have no obligation to disburse any financial assistance under this Agreement, including payment of the Incentive Grant Payment, if the following occurs prior to

payment: (i) an Event of Bankruptcy or Insolvency occurs; or (ii) an Event of Default occurs with respect to the Developer that is not cured within the applicable period of notice and cure.

SECTION 9. EVENTS OF DEFAULT.

Each of the following shall constitute an "Event of Default" under this Agreement:

(a) **General Event of Default.** Failure of Developer or City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement, or failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City.

(b) **False Statements.** A determination by the City that any warranty, representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement, is false or misleading in any material respect, either now or at the time made.

(c) **Event of Bankruptcy or Insolvency.** The occurrence of an Event of Bankruptcy or Insolvency of either party.

(d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City, Dallas County Central Appraisal District, or Dallas Central Appraisal District, as applicable.

(e) **Developer Fee Payments**. Developer does not timely pay City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees in connection with the Property and for the Offsite Infrastructure Improvements.

(f) **Developer Contract Compliance**. Developer or City has breached a material provision of this Agreement beyond the notice and cure periods set forth herein.

(g) **Assignment.** Developer assigns this Agreement, in whole or in part, in violation of this Agreement.

(j) **General Conditions Precedent**. Developer does not timely perform each and every General Conditions Precedent provided in Section 4(a) of this Agreement.

(k) **Specific Conditions Precedent**. Developer does not timely perform each and every Specific Conditions Precedent provided for in Sections 4(b-g) of this Agreement.

SECTION 10. EFFECT OF AN EVENT OF DEFAULT.

Excepting and excluding Section 9(c) and Section 9(d), in the Event of Default under

Section 9 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement or maintain a cause of action for damages caused by the event(s) of default.

City Remedies. In the event of a Developer default that has continued uncured beyond any applicable grace or cure period, the City shall have no obligation to pay each Incentive Grant Payment to the Developer and the City shall have the right as its sole remedies to: (i) if already paid, recapture each Incentive Grant Payment (including the full amount of any fees/costs waived by the City) paid by the City to the Developer as more fully set forth in further detail below; and (ii) terminate this Agreement by written notice to the Developer in which event neither party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. Except as provided herein, in no event will the City be entitled to the recovery of attorneys' fees (except in the event of the exercise of the City of the remedies set forth in Chapter 2264 of the Texas Government Code or except in the event Developer asserts a claim for attorneys' fees against City) or consequential, punitive, exemplary or speculative damages.

In the event of an uncured Developer default and should the City have already paid an Incentive Grant Payment to Developer, Developer shall immediately pay to the City, at the City's address set forth in this Agreement, depending on the improvements completed by the Developer at the time of the default, the following amounts:

i. The full amount of the Incentive Grant Payments (including but not limited to any amounts waived by the City) plus interest;
ii. After full compliance and satisfaction of the General Conditions Precedent, Rental Community Group 2 Conditions Precedent and the Storage Facility Conditions Precedent, seventy percent (70%) of the Incentive Grant Payments plus interest;
iii. After full compliance and satisfaction of the items listed in subsection "ii." above and the Rental Community Group 3 Conditions Precedent, fifty percent (50%) of the Incentive Grant Payments plus interest;
iv. After full compliance and satisfaction of the items listed in subsection "ii." and "iii." above, and the Rental Community Group 4 Conditions Precedent, twenty-five percent (25%) of the Incentive Grant Payments plus interest.

For purposes of this Section, interest shall be at the rate equal to the lesser of: (i) the Maximum Lawful Rate; or (ii) six percent (6%) per annum, with such interest rate to be calculated on each Incentive Grant Payment being recaptured from the date such Incentive Grant Payment was paid by the City until the date repaid by the Developer to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. The remedies provided in this Section are in addition to any other rights and remedies available to the City under this Agreement and applicable law.

Developer Remedies. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, Developer shall have the right as its sole remedies to

(a) terminate this Agreement by written notice to the City in which event neither party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, or (b) recover from the City the amount of any Incentive Grant then earned, owed and unpaid by the City as damages in accordance with the following provisions. The recovery of damages against the City shall not include attorney's fees, court costs, or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits. The City and Developer acknowledge and agree that this Agreement is not a waiver of the City's immunity from suit pursuant to Subchapter I, Section 271.152 of Chapter 271, V.T.C.A., Local Government Code, as amended or under other applicable laws. Alternatively, if and only in the event a competent jurisdiction determines the City's immunity from suit is waived, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed that of the Incentive Grant provided in Section 7 of this Agreement earned by the Developer, owed and unpaid by City;

2. any incentive payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) six percent (6%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and

3. the recovery of damages against the City shall not include attorneys' fees, court costs, or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each party pursuant to this Section shall expressly survive the expiration or termination of this Agreement.

SECTION 11. DEVELOPER'S AUTHORITY.

By execution hereof, the Developer warrants and represents that it has the requisite authority to execute this Agreement and the related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

SECTION 12. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** No alteration of or amendment to this Agreement shall be effective unless in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.

(c) **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, except as described below, notwithstanding anything contained herein to the contrary, this Agreement may not be assigned or transferred without the express written consent of the other party. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) the City has approved such assignment in writing. Every assignee shall be subject to and bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Developer shall be permitted, subject to the requirements of this Section 12(c) to assign this Agreement, in part, to buyers of either or both of the Storage Facility or the Rental Community. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by Developer and in the event Developer attempts to assign this Agreement in violation of this Section, the City shall have the right to terminate this Agreement with Developer for cause by written notice to Developer. Notwithstanding the foregoing, subject to written consent by the City not to be unreasonably withheld, Developer may assign its rights and obligations pursuant to this Agreement to any Affiliate of Developer, provided that Developer or its Affiliate remains a party to this Agreement.

(d) **Authority.** The Developer represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Developer has the authority to sign this Agreement on behalf of the Developer.

(e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) **City Council Authorization**. This Agreement was authorized by resolution of the City Council approved at a duly noticed City Council meeting

(g) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(h) **Development Standards.** The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z "Miscellaneous Provisions Prohibiting Certain Government Actions", Chapter 3000 "Governmental Action Affecting Residential and Commercial Construction", regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the "**Act**"). Specifically, § 3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. The Developer acknowledges that, notwithstanding the Act, in consideration of the City's agreement to pay the Incentive Grant Payment to the Developer under the terms and subject to the conditions set forth in this Agreement, the Developer is contractually agreeing: (i) to construct the façade and elevations of all of the Buildings to conform substantially to the renderings of the Buildings on the Exterior Finish Board; (ii) to construct the Buildings in compliance with the Exterior Finish Board and the Facade/Elevation Plans including, without limitation, the Developer agrees: (a) to use and install the paint colors, building products and materials as set forth in the Exterior Finish Board and, Façade/Elevation Plan; and (b) to comply with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods as set forth in the Exterior Finish Board and Façade/Elevation Plan. The Parties acknowledge that the provisions of this Section 12(h) are material to the City's agreement to grant the Incentive Grant and is a bargained for consideration between the Parties.

(i) **Entire Agreement.** This written agreement represents the entire and final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

(j) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

(k) **No Acceleration**. All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

(l) **No Partnership or Joint Venture**. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

(m) **No Third-Party Beneficiaries**. The Parties to this Agreement do not intend to create any third-party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who

is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary.

(n) **Notices.** Any notice and/or certificate or statement required or permitted to be given to any party under the terms of this Agreement shall be in writing and shall be deemed properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether actually received or not, three (3) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change such party's address for notice purposes by giving the other party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

if to the City:	City of Mesquite, Texas 1515 N. Galloway Mesquite, Texas 75149 Attn: City Manager Phone Number: (972) 216-6293
And copy to:	City of Mesquite, Texas 1515 N. Galloway Mesquite, Texas 75149 Attn: City Attorney Phone Number: (972) 216-6272
if to the Developer:	S16 Texas Hold-Em Mesquite, LLC 901 W. Wall St., Suite 106 Grapevine, TX 76051

(o) **Number and Gender.** Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

(p) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the parties.

(q) **Provision of Documentation**. Developer will deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Developer with its covenants in this Agreement.

(r) **Remedies Cumulative**. The parties hereby agree that each right and remedy of the parties provided for in this Agreement shall be cumulative.

(s) **Right to Offset.** The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Developer to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether the debt has been reduced to judgment by a court.

(t) **Sell or Assignment of Property or Building(s)**. Nothing herein shall be construed in a manner which prohibits the Developer from selling or assigning ownership of either or both of the Storage Facility or the Rental Community to any individual or entity (an "**Buyer**"), provided that any Buyer assumes the rights and obligations of the Developer under this Agreement, as those rights and obligations are allocated to the Storage Facility and the Rental Community.

(u) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

(v) **Sovereign Immunity**. No party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.

(w) **Time is of the Essence.** Time is of the essence in the performance of this Agreement and each party hereby waives any rule of law or equity which would otherwise govern time of performance.

(x) **Usury Savings Clause**. The Developer and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Developer are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Section and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate,

without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Developer or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

(y) **Waivers.** All waivers, to be effective, must be in writing and signed by the waiving party. No failure by any party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any party shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

(z) WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE DEVELOPER AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THIS SUBSECTION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

(aa) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, § 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, § 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

(bb) **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall immediately notify the City in writing and repay to the City the amount of any public subsidy provided under this Agreement to Developer plus six percent interest (6.0%), not

later than the 120th day after the date the City notifies Developer of the violation. The City shall have no obligation to pay any Incentive Grant to the Developer if the Developer, or any branch, division, or department of the Developer is convicted of a violation under 8 U.S.C. § 1324a(f).

(cc) **Non-Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2271 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.

(dd) **Prohibition on Contracts with Certain Companies Provision.** In accordance with § 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to § 2252.153 of the Texas Government Code.

(ee) **Firearm Entity or Trade Association**. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the governmental entity, the Developer represents that: (i) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) the Developer will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(ff) **Energy Boycott**. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Developer employs at least ten (10) or more full-time employees and this Agreement has value of at least $100,000 or more that is paid wholly or partly from public funds of the governmental entity, the Developer represents that: (i) the Developer does not boycott energy companies; and (ii) will not boycott energy companies during the term of the Agreement.

(gg) **Report Agreement to Comptroller's Office.** City covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with § 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

(hh) **Force Majeure**. Notwithstanding any provision in this Agreement to the contrary, each time deadline in this Agreement is subject to Force Majeure.

(ii) **Reservation of Legislative Authority.** Notwithstanding any provision in this Agreement,

this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.

[*The Remainder of this Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY:

CITY OF MESQUITE, TEXAS,
A Texas home-rule municipality

DocuSigned by:
Cliff Keheley
76B2EEBD0F6142E...
Cliff Keheley, City Manager

Date Signed: 8/17/2023

ATTEST:

DocuSigned by:
Sonja Land
C2518095973F46A...
Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:
David L. Paschall, City Attorney

By: DocuSigned by:
David Paschall
666E18891208434...
City Attorney

DS

DEVELOPER:

S16 TEXAS HOLD-EM MESQUITE, an Idaho limited liability company

DocuSigned by:
By: Matt Kotter
3C2B720225EE43A...
Name: Matt Kotter
Title: Authorized Signatory
Date Signed: 8/15/2023

Exhibit A

[Legal Description of the Property]

WHEREAS S16 TEXAS HOLD-EM MESQUITE LLC IS THE OWNER OF A TRACT OF LAND SITUATED IN THE SAMUEL ANDREWS SURVEY, ABSTRACT NO. 40, DALLAS, COUNTY, TEXAS, AND BEING ALL OF THE S16 TEXAS HOLD-EM MESQUITE LLC CALLED 14.753 ACRE TRACT AS DESCRIBED IN INSTRUMENT NUMBER 201900350539, OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS (O.P.R.D.C.T.) AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD WITH RED CAP STAMPED "ONEAL 6570" (PREVIOUSLY SET) IN THE WEST LINE OF CLAY ROAD (VARIABLE WIDTH RIGHT-OF-WAY) AT THE NORTHEAST CORNER OF THE ABOVE-MENTIONED 14.753 ACRE TRACT;

THENCE SOUTH 00 DEGREES 21 MINUTES 24 SECONDS WEST, ALONG THE WEST LINE OF CLAY ROAD, AND THE COMMON EAST LINE OF SAID 14.753 ACRE TRACT, A DISTANCE OF 167.37 FEET TO A 1 /2" IRON ROD WITH YELLOW CAP STAMPED "HALFF & ASSOC" FOUND;

THENCE SOUTH 01 DEGREES 20 MINUTES 29 SECONDS WEST, CONTINUING ALONG SAID COMMON LINE, A DISTANCE OF 438.45 FEET TO A 1/2" IRON ROD WITH YELLOW CAP STAMPED "HALFF & ASSOC" FOUND;

THENCE SOUTH 00 DEGREES 15 MINUTES 58 SECONDS WEST, CONTINUING ALONG SAID COMMON LINE, A DISTANCE OF 44.99 FEET TO A 1 /2" IRON ROD WITH CAP STAMPED "HALFF & ASSOC" FOUND;

THENCE SOUTH 44 DEGREES 08 MINUTES 02 SECONDS WEST, CONTINUING ALONG SAID COMMON LINE, A DISTANCE OF 70.92 FEET TO A 1 /2" IRON ROD WITH CAP STAMPED "HALFF & ASSOC" FOUND THE NORTH RIGHT-OF-WAY LINE OF EAST GLEN BLVD. (100 FOOT RIGHT-OF-WAY) SAME BEING THE NORTH LINE OF THAT CERTAIN CALLED 2.85 ACRE TRACT OF LAND AS DESCRIBED IN RIGHT-OF-WAY DEED TO COUNTY OF DALLAS RECORDED IN VOLUME 84043, PAGE 1264, (D.R.D.C.T.), AND BEING AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A DELTA ANGLE OF 10 DEGREES 01 MINUTES 17 SECONDS, A RADIUS OF 4950.00 FEET, AND A LONG CHORD THAT BEARS NORTH 85 DEGREES 31 MINUTES 39 SECONDS WEST FOR A DISTANCE OF 864.68 FEET;

THENCE ALONG SAID NON-TANGENT CURVE TO THE RIGHT AND THE NORTH RIGHT-OF-WAY LINE OF EAST GLEN BLVD., SAME BEING THE NORTH LINE OF THE ABOVE MENTIONED 2.85 ACRE TRACT, AN ARC LENGTH OF 865.78 FEET TO A 1/2" IRON ROD WITH RED CAP STAMPED "ONEAL 6570"

(PREVIOUSLY SET);

THENCE NORTH 79 DEGREES 46 MINUTES 34 SECONDS WEST, CONTINUING ALONG THE NORTH RIGHT-OF-WAY LINE OF EAST GLEN BLVD., SAME BEING THE NORTH LINE OF SAID 2.85 ACRE TRACT, A DISTANCE OF 66.57 FEET TO A 1 /2" IRON ROD WITH RED CAP STAMPED "ONEAL 6570"
(PREVIOUSLY SET) AT THE SOUTHWEST CORNER OF SAID 14.753 ACRE TRACT, FROM WHICH A A 5/8" IRON ROD WITH CAP STAMPED "RPLS 5430" FOUND AT THE SOUTHEAST CORNER OF THAT CERTAIN CALLED 0.863 ACRE TRACT AS DESCRIBED IN DEED TO CHAD VADNAIS AND RECORDED IN INSTRUMENT NUMBER 200402979809, OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS (O.P.R.D.C.T.) BEARS NORTH 79 DEGREES 46 MINUTES 34 SECONDS WEST, A DISTANCE OF 1 08.42 FEET;

THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE OF EAST GLEN BLVD. AND GOING ALONG THE WEST AND NORTH LINES OF SAID 14.753 ACRE TRACT, THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

(1)NORTH 01 DEGREES 54 MINUTES 21 SECONDS EAST, A DISTANCE OF 221.72 FEET TO A 1/2" IRON ROD WITH RED CAP STAMPED
"ONEAL 6570" (PREVIOUSLY SET);
(2)NORTH 18 DEGREES 37 MINUTES 02 SECONDS EAST, A DISTANCE OF 272.23 FEET TO A 1 /2" IRON ROD WITH RED CAP STAMPED
"ONEAL 6570" (PREVIOUSLY SET) AT THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A DELTA ANGLE OF 38 DEGREES 10 MINUTES 59 SECONDS, A RADIUS OF 325.00 FEET AND A LONG CHORD THAT BEARS NORTH 37 DEGREES 42 MINUTES 31 SECONDS EAST FOR A DISTANCE OF 212.60 FEET;
(3)NORTHEASTERLY ALONG SAID TANGENT CURVE TO THE RIGHT, AN ARC LENGTH OF 216.59 FEET TO A 1 /2" IRON ROD WITH RED CAP STAMPED "ONEAL 6570" (PREVIOUSLY SET) AT THE NORTHWEST CORNER OF SAID 14.753 ACRE TRACT;
(4)SOUTH 88 DEGREES 05 MINUTES 38 SECONDS EAST, ALONG THE NORTH LINE OF SAID 14. 753 ACRE TRACT, A DISTANCE OF 764.56 FEET TO THE POINT OF BEGINNING AND CONTAINING 14.753 ACRES OF LAND, MORE OR LESS.

Exhibit B

[Depiction of Braintree Properties Offsite Infrastructure Improvements]

To

Exhibit C

[Description and Depiction of Buildings (including Recreational Facilities)]

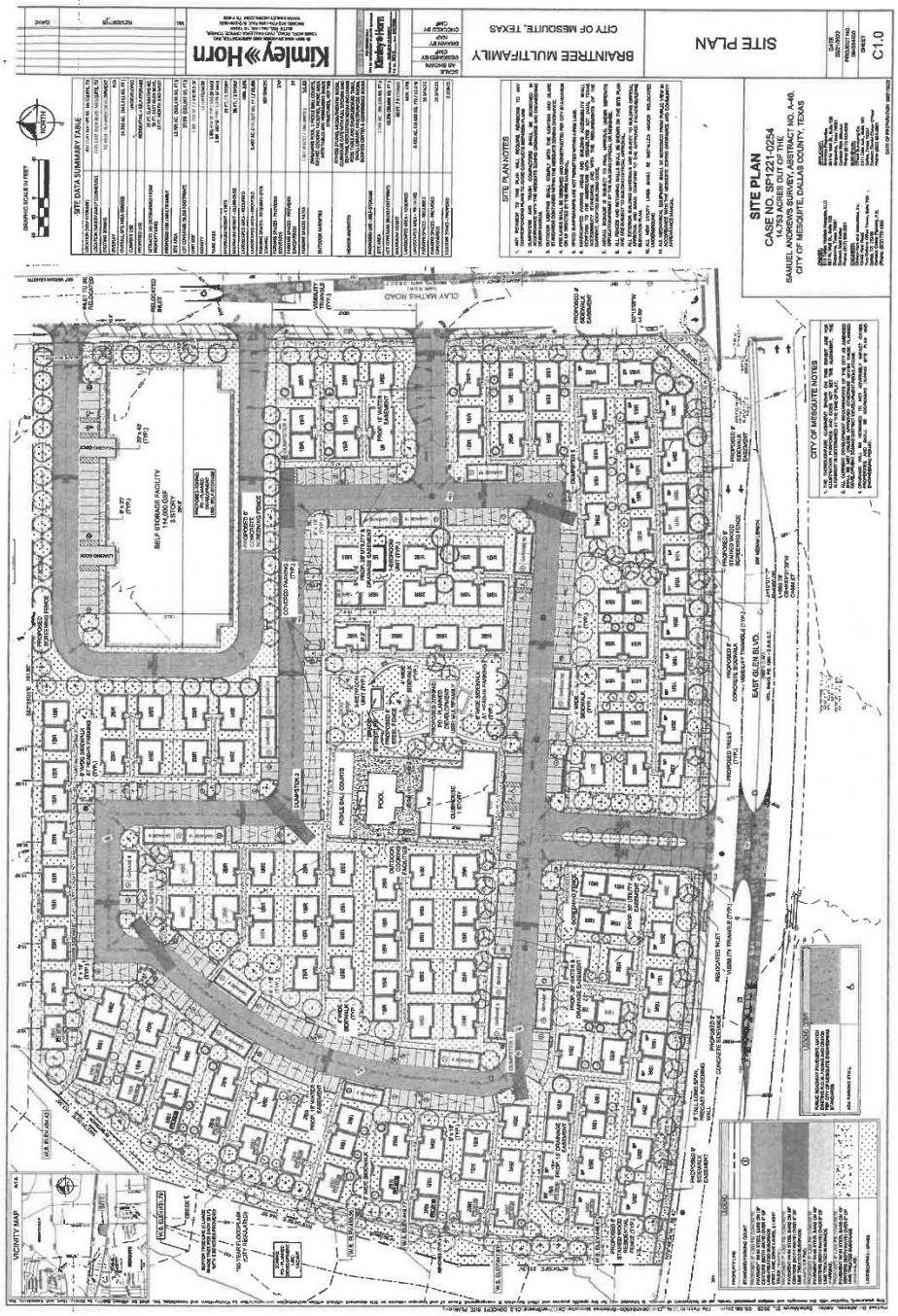

Exhibit D

[Insurance]

CITY OF MESQUITE REQUIREMENTS:

* General Liability with minimum limits of $1,000,000 per Occurrence, $1,000,000 General Aggregate, $1,000,000 Products/Completed Operations Aggregate.
* General Liability must include coverage for Premises and Operations, Products and Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury.
* Auto Liability with minimum limits of $500,000 Combined Single Limit.
* Certificate must include a statement listing "The City of Mesquite, Texas" as additional insured on the General Liability and Auto coverages. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for additional insured, checking those specific boxes is acceptable in meeting this requirement as well.
* Employers Liability with minimum limits of $100,000 Occupational Disease, $100,000 per Accident, and $100,000 per Employee.
* Workers Compensation providing statutory coverage limits.
* Certificate must include a statement providing a Waiver of Subrogation on the Workers Compensation, Employers Liability as well as the General Liability coverage. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for waiver of subrogation, checking those specific boxes is acceptable in meeting this requirement as well.

MESQUITE POLLUTION LIABILITY

City of Mesquite Requirements:

* Evidence of Pollution Liability Coverage.

Exhibit E

[Exterior Finish Board]

BRICK VENEER: EB1
BLUERIDGE MOUNTAIN

BRICK VENEER: EB2
FROSTWOOD

BRICK VENEER: EB3
ALLENTOWN

STONE VENEER: SV1
LIMESTONE

STUCCO - PAINTED

BOARD AND BATTEN - PAINTED

LAP SIDING - PAINTED

EXTERIOR PAINTS

EXTERIOR PAINT: EP-1
SNOWBOUND - 7005

EXTERIOR PAINT: EP-2
DAPHNE - 9152

EXTERIOR PAINT: EP-3
IRON ORE - 7069

EXTERIOR PAINT: EP-4
TIN LIZZIE - 9164

Exhibit F

[Façade/Elevation Plan]

Exhibit G

[Closeout and Acceptance Requirements]

City of Mesquite - Engineering Acceptance of Civil Construction:

June 30, 2015

In addition to proper completion of the construction shown on the engineering plans, there are several important administrative items that must be submitted and approved prior to City acceptance of the improvements and issuance of a Certificate of Occupancy for a project. These administrative items include:

- ☐ **Record Drawings.** If changes to the "released" set of Engineering Plans are needed during construction, they must be submitted to the City Engineering Division for review and release. Both hard copy and electronic copy of record drawings are required prior to final acceptance. Requirements for records drawings can be obtained on the Engineering Division web page at: http://www.cityofmesquite.com/DocumentCenter/Home/View/417

- ☐ **Maintenance Bond** – a one-year maintenance bond for 10% of the cost of the public improvements (or a minimum of $500.00) must be submitted to your assigned Engineering Division Public Works Construction Inspector.

- ☐ **Acceptance Letter Request Form –** fill out this form and turn into your assigned Engineering Division Public Works Construction Inspector. This form is available at: http://www.cityofmesquite.com/DocumentCenter/Home/View/5128

- ☐ All required **construction and material tests reports** have been successfully completed and witnessed by your inspector and related documentation of these tests submitted to your assigned Engineering Division Public Works Construction Inspector.

- ☐ All other project documentation complete, City invoices paid, etc.